

CONSULTATION REPORT

Education Legislation Amendments (Education Regulation) Bill 2021

Delivering the Review of Education Regulation

October 2021





Purpose

This report summarises the feedback received in relation to the Draft *Education Legislation Amendments (Education Regulation) Bill 2021, Version 5* (the Draft Bill), during 9 July to 22 August 2021 Consultation Process.

This report is part of our commitment to ensuring stakeholder feedback contributes to the advice provided to the Minister for Education with regards to implementation of the recommendations of the Review of Education Regulation (the Review). The report also details what changes have been made to the final Bill in response to the feedback.

Background

Education is the single most powerful driver for improving economic and social outcomes in Tasmania, including health outcomes, life expectancy, happiness and productivity. The Tasmanian Government is modernising the regulatory framework for Education in Tasmania to improve educational outcomes for Tasmanian students and young people. A modern approach to regulation of education will drive results and improve:

- the quality of teaching that our learners experience
- how students' learning is assessed and recognised
- the quality and safety of learning environments
- the extent to which students are participating and engaged in learning pathways.

Getting the framework and governance right will organise our education regulators for success benefitting students and young people within the Tasmanian education system across all sectors.

The Teachers Registration Board (TRB), Office of Tasmanian Assessment, Standards & Certification (TASC), the Registrar Education (The Registrar), and the Non-Government Schools Registration Board (NGSRB) all provide critical regulatory oversight and support services to education in Tasmania. They provide this support for all education sectors, including government schools, independent schools, Catholic schools and some parts of the Vocational Education and Training (VET) sector.

As part of the 2019–20 State Budget, the Tasmanian Government committed to a review of the regulatory framework supporting these regulators. The Minister for Education and Training established a cross-sector Steering Committee with an independent Chair and representatives from each of the government, independent and Catholic school sectors, the Department of Treasury and Finance and the Department of Premier and Cabinet.

The Steering Committee was stood up in July 2020 to conduct the Review and provide the Minister with a set of recommendations and advice on their implementation. The Committee considered the objectives of the Review, best practice approaches to regulation, what happens in other jurisdictions, and the current state in Tasmania. It directly engaged with the Regulators and released a Discussion Paper on which public consultation was conducted from 25 August to 4 October 2020. The Steering Committee actively considered the submissions from that consultation to inform the development of 24 Recommendations.

All 24 Recommendations were accepted by then Minister for Education and Training, the Hon Jeremy Rockliff MP and the Government.



The recommendations will modernise the regulatory framework for education by providing for:

- modern governance for the delivery of outcomes,
- the provision of independent advice,
- better practice regulation with a focus on outcomes, and
- a sustainable funding model.

The 24 Recommendations as well as the Steering Committee's process for the Review are detailed in the [*Review of Education Regulation Steering Committee Report*](#) (the Report) which was released in January 2021. The Report and a [summary of the Recommendations](https://www.education.tas.gov.au/about-us/legislation/review-of-education-regulation/) can be found via <https://www.education.tas.gov.au/about-us/legislation/review-of-education-regulation/>.

Following the 2021 Tasmanian Election, the new Minister for Education, the Hon Sarah Courtney MP remains committed to the 24 recommendations accepted by Government, and is keen to deliver a modern regulatory framework for Tasmanian Education.

Consultation Process

A number of the 24 Recommendations detailed in the Report required legislative change to implement. The Consultation Draft made amendments to six Acts and subordinate legislation to give effect to these Recommendations.

As a part of the Tasmanian Government commitment, to provide opportunities for community involvement in the development of Government policy, the Department of Education sought feedback on the Draft Bill between 9 July to 22 August 2021.

The Draft Bill and information regarding the Review was provided to:

- The Teacher Registration Board
- The Office of the Tasmanian Assessment, Standards and Certification
- The Registrar, Education
- The Non-Government Schools Registration Board
- All Regulator staff
- The three education sectors Catholic, Independent and Government
- TasTAFE
- The University of Tasmania
- Tasmanian Home Education Advisory Council (THEAC)
- The Framework Advisory Council (FAC)
- Relevant State Government Agencies
- The Australian Education Union (Tasmanian Branch)
- The Community and Public Sector Union
- The Independent Education Union
- A number of education, community and public sector organisations
- The general public through publication on the Review website and via social media
- The media and public via press release.

Face-to-face briefings were offered to all stakeholders, and 16 were provided during this period.

During that time, the Review website received 977 page views and 867 unique visits.



In total, 13 formal submissions were received, one of which was submitted confidentially. In accordance with the Tasmanian Government Public Submissions Policy submissions will be treated as public information and will be published on the Review of Education Regulation website. No personal information other than an individual's name or the organisation making a submission will be published unless requested otherwise.

Following conclusion of the consultation process continued engagement has occurred with critical stakeholders including the regulators.

What We Heard

The scope of the consultation process was whether the Draft Bill gave effect to the recommendations in the Steering Committee Report and if there were any unforeseen consequences that needed to be considered by Government.

Most of the feedback received in both the submissions and face-to-face meetings related to how the Recommendations of the Review would be implemented rather than the Draft Bill itself. There were also submissions and issues raised which were outside the scope of the Review and the Draft Bill.

Questions and comments have been used to:

- Cross check the policy intent as it was legislated in the Draft Bill.
- Facilitate deeper discussion with the Regulators and their staff about how the model will work, and how the Bill will be operationalised.
- Update and clarify intent in the Parliamentary package including the Fact Sheet, Second Reading Speech and Clause Notes.
- Inform implementation and transition planning.
- Record issues and comments for consideration and action through future reviews of the *Education Act 2016*, *Teachers Registration Act 2000* (TR Act) and the *Office of Tasmanian Assessment, Standards and Certification Act 2003* (TASC Act)

All 13 submissions have been responded to formally.

Where information can be provided in relation to these questions links to further information on the [Website](#) have been provided.

This report only details what we heard in relation to the Draft Bill and the key changes have been made in the Final Bill as a result of the Consultation. Much of the Bill and the original recommendations are integrated and interrelated. For ease of reference and understanding the feedback has been organised against the original Steering Committee recommendations by theme.



Better Practice Regulation with a Focus on Outcomes

Steering Committee recommendations relating to better practice regulation, which required legislative change, were 1, 2, 3, and 4.

Education Act 2016 Principles

Feedback on the Draft Bill included:

- General questions and comments about the *Education Act 2016* principles as they related to regulators including definitions.
- Whether the intent of including *Education Act 2016* principles had been adequately reflected in the draft Bill through replication in the TR Act and the TASC Act?
- Whether the sections relating to the application of the principles were too directive?
- Perceived negative implications of the application of principles (as drafted) from a range of perspectives. This included regulator resourcing, risk, decision making, ambiguity and potential misinterpretation of the legislation in the context of their functions and powers.
- Acknowledgement of the importance of student voice as articulated in the existing principles and the need for establishment of mechanisms through which children and young people can express their views.
- Support for the inclusion of the new principle relating to the quality of education a student is entitled to.

Changes made to the Final Bill:

- Softening of the application of the current *Education Act 2016* principles, within the Education Act, to provide that a person performing a function, action or duty under this Act is to “have regard” to the principles.
- Rather than replicating *Education Act 2016* principles within the TR Act and TASC Act, each Act now simply references the principles set out in section 4(1) of the *Education Act 2016*.
- For consistency the TR Act and TASC Act have also had the application of the principles softened through adjusted language to provide that a person performing a function, action or duty under this Act is to “have regard” to the principles.

Regulator and Function Specific Principles

Feedback on the Draft Bill included:

- General questions and comments about the regulator and function specific principles, including the level of detail within the principles (as drafted).
- Perceived negative implications of the application of principles (as drafted) from a range of perspectives. This included regulator resourcing, risk, decision making, ambiguity and potential misinterpretation of the legislation in the context of their functions and powers.
- Concern regarding the definitions and inclusion of the terms ‘welfare’ and ‘best interests’.
- Concern regarding the removal of Section 7A of the TR Act and its replication in the principles instead.



- Comments seeking clarification about the definition of terms including 'regulated entity' and 'education provider' in the context of the regulator's functions.

Changes made to the Final Bill:

- Removal of the sections which detailed regulator and function specific principles in the Principal Acts.
- Altered provision to enable 'principles of education regulator best practice' to be specified in Ministerial Instruction which can provide for more flexibility in how they are set and applied, and enables them to be updated as leading practice changes.
- For consistency with the application of the *Education Act 2016* principles this is now linked to the discharge of functions and powers. Education regulators are to "have regard" to them as specified through Ministerial Instruction.
- As a result of this change in approach the definition of "Regulated Entity" and "Education Providers" were no longer required and removed.
- Section 7A of the TR Act has been reinstated.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.

Performance Framework

Feedback on the Draft Bill included:

- Is the timing of the performance framework including the Minister's Statement of Expectations on a calendar year or financial year cycle? There is inconsistency.
- Who manages the performance of regulators?
- Who will manage performance of staff?
- Can the Minister currently revoke a Statement of Expectations and not issue one to replace it.
- Is the Minister's Independent Power of Review too broad and open ended?

Changes made to the Final Bill:

- Updated the Ministerial Statement of Expectations and other elements of the performance framework to financial year dates, but maintained the ability for the Minister to specify in Ministerial Instructions if change is required to a calendar year.
- Updated to ensure that the Minister can only amend or issue a new Statement of Expectations.
- Narrowed the scope of the Independent Power of Review to the operation of the Regulators including the performance and exercise of their functions and powers. Removed requirement for Minister to "think it's necessary" to recognise that regular review is a feature of good governance.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.



Modern Governance for the Delivery of Outcomes

Steering Committee recommendations relating to governance, which required legislative change, were 7, 8, 9, 13.

Director Education Regulation and Delegations

Feedback on the Draft Bill included:

- Why isn't the Director role legislated? How can each regulator be retained as a separate entity yet the functions and powers will be combined in one Director Education Regulation position?
- Concern regarding how this role might impact Home Education and what safeguards will there be to ensure Home Education is not negatively impacted?
- Concern that while relevant administrative functions could be centralised, the fundamental powers of the Boards are too extensive to be managed by one Director.
- Questions about decision making power of the Registrars and/or Senior Officers in each Regulator and the need for more clarity.

Changes made to the Final Bill:

- The Director, Education Regulation is still not established in the legislation and the existing role of Registrar, Education as it is currently legislated in the *Education Act 2016* will continue. The Bill provides for two new Registrar roles to support the TRB and TASC Boards.
- The appointment provision has been updated, from a direct appointment process, to enable the Registrar, Education to be assigned and to hold other duties in addition to their State Service employment.
- It is envisaged that the Director Education Regulation will be appointed to assume the functions of and powers of the three Registrars, supported by three Deputy Directors (previously described as Senior Officers in the Steering Committee Report).
- Contemporary regulators need to be able to delegate responsibility for the performance of their functions and exercise of their powers, in order to effectively undertake their role in oversight of the performance and governance of their organisation. Delegations are already used by the regulators. Although responsibility can be delegated, accountability ultimately remains with the delegator. The amendment provides that:
 - » The Boards may delegate any of their functions and powers under their Act other than the power of delegation.
 - » The Registrars may delegate to a State Service officer or State Service employee in the Department any of his or her functions or powers other than the power of delegation.
 - » The Registrar is permitted to further delegate functions which the board has delegated to him or her (noting that that Board can place limitations on this through its delegation process).
- Delegation frameworks already operate effectively in more complex environments than education regulation. For example, the Tasmanian State Service Act provides for the Premier to delegate functions or powers to the Head of the State Service and /or Heads of State Service agencies. These delegations are then allocated within agencies.



- Provisions have been included to ensure that each Registrar (the Director once appointed) is entitled to attend meetings, with the board able to meet without the Registrar in order to discuss performance. Attendance at the meeting is also delegable.
- The Framework Agreement sections now provide for clarification regarding performance management of staff to be agreed between the Regulators and the Secretary. This would be in accordance with the *State Service Act 2000*.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.

There is further information on the Principles, the Director of Education Regulation and the newly titled Deputy Director roles on the Review [Website](#) including information specifically for Home Educators.

Stakeholder Voice

Feedback on the Draft Bill included:

- General questions regarding the necessity to legislate the ability to establish committees.
- The importance for mechanisms such as committees, or advisory groups to provide for important stakeholder voice, including that of students, where relevant.
- Concerns regarding the removal of the Framework Advisory Council and replacement with the TASC Board, and whether this inadvertently removed the requirement for consultation with the sectors relating in the development and implementation of the Senior Secondary Accreditation Framework?

Changes made to the Final Bill:

- The Bill clarifies that committees are stood up to advise and assist the Regulators in the performance and the exercise of functions and powers.
- It is now explicit that a board member can be on a committee.
- Like the regulators themselves committees will need to have regard to the *Education Act 2016* principles and the principles of regulator best practice.
- The existing provisions relating to the creation of committees and best practice principles of regulation were assessed, as being adequate to enable the design of mechanisms to include stakeholder voice, including student voice where appropriate, in the design and delivery of regulatory approaches.
- The TASC Act was updated to include a requirement for the three education sectors and schools to be consulted in the development of the Senior Secondary Accreditation Framework, and that they may be consulted as it relates to implementation of the framework.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.



Provision of Independent Advice

Steering Committee recommendations relating to independence of decision making, that required legislative change include 15, 16, 17, 18, 19, 20.

Skills-based Boards, Board Selection Processes, and Committees

Feedback on the Draft Bill included:

- General questions regarding the establishment, appointment, term length, and transition to skills-based boards for the TRB, TASC and the NGRSB.
- The need for clarity about the appointment of Board Chairs, and whether there was an unintentional limitation in the Draft Bill on the Board Chair being selected from the existing board members, eg. if Chair were to resign and there were no suitable candidates from within the remaining board membership?
- Concerns include the importance of the boards being involved in the process particularly in determining the generalist and specific skills and expertise for each of the Board functions.
- Whether, in addition to the skills as drafted, the TRB membership ought to specify a requirement for “current and ongoing teaching experience”.
- Whether the current quorum requirements would be restrictive or enable decisions to be made with a very small number of current board members present.
- Whether board members will be required to have a Registration for Working with Vulnerable People (RWVP) or a Good Character check.
- Queries as to why the NGRSB had been made a body corporate, and whether it needed to be?
- Concerns regarding how the TRB will manage its current workload within the limit of 5-7 members including the Chair. This was of particular concern as a Board member is currently required to be a member of any committee of inquiry process, and there has been a historical issued regarding board remuneration for committee work.

Changes made to the Final Bill:

- Changes were made to the sections about board selection to permit the Minister to appoint a chairperson from outside the existing membership of the board. The chairperson is still considered a member of the Board and counts as one of the five to seven members and is subject to the same selection process in their appointment by the Minister.
- The provisions relating to board advertising were modernised so that in addition to local advertising in newspapers they may be published in a journal, through the internet or in print or electronic communication.
- The terms used in the Final Bill are limited to ‘general board governance skills’ and ‘skills relevant to the Boards functions’ consistently across all Acts. A guideline is being developed to support this process including the development and management by the Boards of a skills matrix which will identify, in addition to general board governance skills, specific skills relevant to their functions and strategic direction. This will include skills, knowledge, experience, capabilities and attributes, and can be changed by the board as vacancies arise.
- Current and ongoing teaching experience has not been included in the TRB membership section of the Final Bill. It is expected, and has been articulated in the Second Reading Speech, that the voices of teachers is a part



of any fit for purpose governance structure designed by the TRB. Further this skill set can be specified in the skills matrix maintained by the Board and has already been included in the draft submission they prepared.

- Legislated a specific requirement for board members to hold a current RWVP and provided for removal from office if it is revoked or suspended.
- Provided for a quorum to be a majority of the current membership of the board.
- The Body Corporate status for the NGSRB section was removed. This was included in the Draft Bill for consistency with other Regulators but on further assessment it was determined this was not required for the NGSRB as it already has the powers needed to perform its functions.
- A flow on consequence of checking the consistency of entity status, the Final Bill now provides for TASC board members to receive immunity, in the same way TRB and NGSRB members currently do.
- Relating to the TRB committee of inquiry process and concerns relating to the lower number of board members:
 - » Removed the absolute requirement to include a board member as part of the committee of inquiry process and amended section 21 so as the establishment of a committee of inquiry process is now:
 - 2 to 4 people who are registered teachers, and
 - If determined necessary (by the board) a member of the board, and
 - Other people the board determine have the necessary skills.
 - » The Final Bill also provides an explicit provision permitting payment for TRB committee members to support this function. The Minister is able to determine this.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.

Clarity of Roles and Accountabilities

Feedback on the Draft Bill included:

- Whether the terminology in the Framework Agreement sections was correct?
- Whether the roles of the Secretary, Department of Education and the Minister as they relate to the Regulators are clear?
- Whether the sections that clarify accountability to (and of) the Registrars, the Boards, to the Minister and the Secretary have the correct functions listed?
- Concerns regarding staffing and how this is currently managed through arrangement with the Department with each of the Regulators.
- Whether the sections in the Ministerial Statement of Expectations relating to the Minister not being able to stop the Regulators from performing a function, extending their functions, or directing them in relation to an individual case were broad enough to deliver on the original Steering Committee recommendation 16?
- Whether section 14 of the TASC Act relating to the Independence of TASC was now in conflict with the roles and accountabilities as set out for the TASC board in relation to the Minister and the Secretary (recommendations 16, 17, and 18).



- Whether unnecessary infrastructure and requirements were being established through the development of separate Corporate Plans, Annual Reports and Framework Agreements for each of the Registrar Education and NGSRB, when in practice they are supported by a single office and a small number of staff.

Changes made to the Final Bill:

- Sections which clarify the accountability of the Boards, to the Minister, and to the Secretary for specific functions have been reviewed and updated to ensure all the relevant functions have been addressed.
- In addition to the Statement of Expectations sections, new sections have been added which clarify for all regulators that neither the Minister nor the Secretary is able direct the Regulators in relation to an individual decision made under their Act. The original section 14 Independence of Office for TASC has been removed and replaced with these provisions.
- The Framework Agreement section terminology has been updated to reflect that in some instances the Department may provide more than just corporate support e.g. data management functions for TASC. Terminology used is now “support and functions” rather than “corporate support”. In addition, the reference to “data” was removed as information sharing arrangements includes data sharing (in accordance with existing legislation).
- The staffing sections have been revised for each regulator to clarify that staff are appointed as part of the Department under the *State Service Act 2000*. An explicit reference was also included to provide for assignment of State Service officers, in addition to employees. This aligns with and reflects current practice.
- The NGSRB’s Corporate Plan, Annual Report and Framework Agreement are still set as requirements but are to be incorporated into the those produced by the Registrar, Education. This combination reflects the shared staffing and small size of both entities and the function of the Registrar, Education in supporting the NGSRB.

The intention of these changes has been articulated in the Second Reading Speech and Clause Notes for clarity and to guide interpretation.

Implementation and Transitional Arrangements

Feedback on the Draft Bill:

- Are the transitional arrangements for the Office of TASC in the Draft Bill comprehensive enough?
- Have all the references to the former *Education Act 1994* been picked up?

Changes made to the Final Bill:

- Updated the TASC transitional arrangements to include reference to cancellations or suspensions, recognitions, determinations and recommendations.
- Further references to the *Education Act 1994* were identified and updated as it related to the *Education and Training (Tasmanian Academy) Act 2008*.



Further Information

Further information regarding the Review of Education Regulation can be found at the website:
<https://www.education.tas.gov.au/about-us/legislation/review-of-education-regulation/>

Alternatively, contact:

Alice Blake

Principal Policy Analyst

Email: legislation@education.tas.gov.au

Phone: (03) 6165 6419